



Department of Justice
Canada

Ministère de la Justice
Canada

Government
Publications

CAI
N 1
- 1984
S 061



RESEARCH ON MEDIA STRATEGIES AND PRACTICES IN THE FIELD OF LEGAL NEWS



Research Reports of the Canadian Sentencing Commission

Research and Development
Directorate

Policy, Programs and Research
Branch

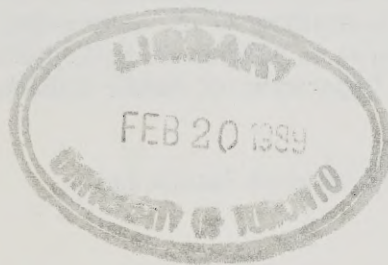
Canada

Direction générale de la
recherche et du
développement

Direction de la politique, des
programmes et de la recherche

CAF
Z1
-1984
S.061

**RESEARCH ON MEDIA STRATEGIES AND PRACTICES
IN THE FIELD OF LEGAL NEWS**



**Gaëtan Tremblay
1988**

This report was written for the Canadian Sentencing Commission. The views expressed here are solely those of the authors and do not necessarily represent the views or policies of the Canadian Sentencing Commission or the Department of Justice Canada.

Published by authority of the Minister of Justice and Attorney General of Canada

For additional copies, please write or call
Communications and Public Affairs
Department of Justice Canada
Ottawa, Ontario
K1A 0H8

(613) 957-4222

Catalogue No. J23-3/14-1988E
ISBN 0-662-15876-8
ISSN 0836-1797

Également disponible en français


© Minister of Supply and Services Canada 1988

Printed in Canada

JUS-P-455

TABLE OF CONTENTS

1.	Aim of the Study	1
2.	Method of Investigation	4
3.	News Practices	6
3.1	Importance Given to Legal News	6
3.2	The Selection of News	9
3.3	The Coverage of Sentences	16
3.31	News	17
3.32	Commentary and Analysis	21
3.33	Coverage of Plea Bargaining	23
4.	News Policy, Code of Ethics and Professional Rules	25
5.	Perceptions and Opinions of Journalists	29
5.1	The Severity of the Law and Its Application	29
5.2	Relations Between Judges and Journalists.	34
5.3	Evaluation of the Role of the Media.	36
5.4	The Influence of the Media	41
	Conclusion	45
	Recommendations	47
	Appendix A	49
	Appendix B	51



Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

<https://archive.org/details/31761119729341>

1. AIM OF THE STUDY

In January 1986, the Canadian Sentencing Commission asked us to proceed with a study on the news policies and practices of the Quebec media regarding judicial matters. Bearing in mind the needs of the Commission and the deadlines imposed (report at the end of March), it was agreed with the Research Director, Mr. Jean-Paul Brodeur, to carry out exploratory-descriptive research by conducting between twelve and fifteen interviews among the legal reporters of a number of large media, from the print as well as the electronic media.

To identify the manner in which the media cover legal news, we selected four broad dimensions: the news practices themselves, the normative system which regulates them, the impressions of legal reporters and the relations that they maintain with the various types of participants (cf. diagram on p. 4).

Any journalistic activity, regardless of its field, involves a number of operations: the selection of news, the choice of the content reported, the determination of the forms of presentation, and the evaluation of the event. We asked the legal reporters to describe these activities for us and to identify the criteria upon which they based their decisions.

Social practices usually being governed by a variety of norms, we sought to determine the manner in which possible news policies, codes of ethics, collective agreements or rules of the profession shape journalistic activity in the legal field. It was found, as a reading of this report will show, that the main guidelines for the exercise of the profession are provided by the Criminal Code and the Press Act.

The perceptions of the participants constitute another factor liable to influence practices. Therefore, we questioned legal reporters in order to become acquainted with their opinions on a number of issues concerning the administration of justice.

Finally, journalistic activity involves relations with certain categories of participants who greatly influence news practices. In the legal field, relations with judges, lawyers, police officers, the accused and colleagues can play a primary role. The information obtained regarding this dimension of the activity of legal reporters does not constitute a separate part of this report. It will be found dispersed in the other three sections. Relations with colleagues, for example, are touched upon in the first part which deals with news practices, in connection with the pool operation of journalists covering the Law Courts. Relations with judges are dealt with in the section on perceptions regarding the administration of justice.

What will be found in this report is essentially a description of perceptions. The method of investigation chosen - the interview - in fact gave us access to the perceptions that journalists have of their profession. It is not necessary here to go over the lessons from sociology and social psychology regarding the differences existing between perceptions and practice. We should emphasize, however, by way of a brief reminder, that these same disciplines have on many occasions demonstrated the importance of perceptions and the influence that they have at various levels of life in society.

Diagram of the Main Dimensions of Journalistic Activity in the Legal Field

Normative System

- 1) News Policy
 - 2) Code of Ethics
 - 3) Collective Agreement
 - 4) Professional Rules
-

News Practices

- 1) Selection
 - 2) News
 - 3) Presentation
 - 4) Evaluation
-

Perceptions

- 1) Law
 - 2) Judge - Jury
 - 3) Victim
 - 4) Public
 - 5) Media (influence)
-

Relations

- 1) Police Officers
 - 2) Lawyers
 - 3) Judges
 - 4) Victims
 - 5) The Accused
 - 6) Colleagues
-

2. METHOD OF INVESTIGATION

Annexed to this report one will find the interview format as well as a list of the media contacted and persons interviewed. The interview format consists of three main parts: 1) news practices in legal matters, and more particularly concerning the coverage of sentences, 2) professional rules governing the exercise of the profession, and 3) opinions of the interviewee on certain issues connected with the administration of justice.

Fourteen persons from thirteen different media were interviewed. In almost all cases there was swift and full cooperation. Here, we wish to thank all those who so kindly facilitated our work. Only one of the media that was approached was finally unable to participate in an interview. This was television station CFCF. We called them by telephone some fifteen times, left about ten messages, and spoke to five different persons without being able to obtain a firm interview. Given the production deadlines for this report and the numerous unproductive efforts, we were forced to conclude that there was a certain degree of passive resistance.

Each interview lasted between one hour and one hour and a half, with the exception of one (the interview carried out at television station CFTM). In this latter case, since the journalist authorized to meet with us was outside the country for an extended period of time, we interviewed a newsroom dispatcher. His unfamiliarity with the subject shortened the normal duration of the interview.

Of the fourteen persons interviewed, twelve are journalists who are full- or part-time legal reporters. Of the other two, one is a newsroom dispatcher, and the other is a news director for a weekly specializing in criminal cases.

In each case, the interview was recorded in full with a tape recorder. The confidentiality of opinions expressed was guaranteed to the persons interviewed. This is why the quotations contained in this report are not identified, not even with a code. Given the small size of our sample, it would have been too easy, if cross-checkings had been used, to recognize the views of some of our interviewees. In the text which follows, each quotation enclosed by quotation marks (" ") constitutes a particular intervention by an interviewee. The skipping of a line and the opening of new quotation marks indicate that we are moving on to someone else's views.

As agreed at the beginning with the Sentencing Commission's Research Director, the interviews were not completely re-transcribed, the production deadlines for the report and the resources allocated to the research not allowing such a costly procedure. The analysis, therefore, is based on notes concerning each topic touched upon in the interview during a careful re-listening of the recordings.

From the interviewees we gathered information on a number of independent variables: sex, age, number of years of experience as a journalist, number of years of experience as a legal reporter, type of training, and the medium to which they belonged. Our sample includes three women and eleven men. Age is very uneven as well as experience as a journalist and as a legal reporter (from a few months to four years). Nine persons out of fourteen possess a university-level education and a tenth person is presently taking courses towards a bachelor's degree. Three of them have completed a law degree and three others mentioned to us that they had taken one or more courses on the legal system. Eight persons interviewed work for a newspaper, three in radio, and three in television.

Once again bearing in mind the small size of our sample, it is impossible to draw conclusions as to the influence of any one of these variables. None of them seemed to us to have a determining effect on practices and opinions, other than that of belonging to a particular media. As will be seen later, practices are very different depending on whether one works in the print media, in radio or in television. And each news organization within these three main types has its own characteristics.

3. NEWS PRACTICES

3.1 Importance Given to Legal News

The position occupied by legal news varies depending on the type of media and the characteristics of the news style that it practices in general. The print medium devotes more space to legal news than does the electronic media. And within the electronic media, radio broadcasts more bulletins concerning this sector of activities than does television.

La Presse, **le Journal de Montreal** and **The Gazette** each assign two full-time journalists to the coverage of the Law Courts. The weekly **Photo Police** also keeps one person there four days per week. **Le Soleil** of Quebec also relies on the services of one full-time legal reporter, but this person does not spend all his time at Petty Court. He also covers some Supreme Court decisions, Municipal Court cases, and certain other legal issues. No other media hire full-time legal reporters, most being content to occasionally assign a journalist when events warrant it. One private radio station includes a single legal reporter in its ranks but this person also looks after police news.

The seven legal reporters who occupy a bureau at the Montreal Law Courts work as a pool. This means that they usually divide among themselves the cases that they consider worthy of interest and at the end of the day they prepare a common report. The agreement does not require them to share 'scoops' and it may occasionally happen, during major cases, that all (or several) of them go to the same court. Generally, they all have the same information concerning a number of cases.

"We set up a pool, in other words we ask ourselves what we are going to do this morning, we exchange our information, and everyone goes his own way. At the noon hour and at the end of the afternoon, we share everything and then we write our papers. This, then, enables us to have a much broader range. However, when a particular news item is extremely important, we cover it in person. It may happen that we all end up side by side."

None of the media reserve specific space or time, in the form of regular reporting, for legal news. The articles or news bulletins written by the legal reporters must "compete" with news originating from other news sectors. Therefore, the space or time given to them varies daily depending on current events, and the relative importance of each news item as evaluated by the desk chiefs:

"All current event sectors are in competition with each other. Some issues do not receive the attention that they deserve. It is a question of space and resources. There is daily arbitration. There is no longer any room for padding."

Any quantitative evaluation of the number of articles devoted weekly to legal news therefore constitutes only a very relative approximation. One can however, on the basis of the perceptions of legal reporters, establish certain rankings in terms of size or space. For the dailies, one can make the following estimates:

- **Le Devoir:** 2 or 3 articles per week;

- **La Presse:** between 20 and 25 articles per week;
- **Le Journal de Montréal:** nearly one complete page per day, representing approximately 25 articles per week;
- **The Gazette:** between 20 and 25 articles per week;
- **Le Soleil:** about ten articles per week.

As for the other media, evaluations are much more difficult to make. The reporters are not assigned to cover legal news full-time and the situation changes from day to day, and from week to week. This is what one reporter working for a weekly specializing in police news said about it:

"On the average, I write a dozen articles per week. Sometimes they all go through, sometimes six, sometimes one. I argue with my desk chief every day."

On radio, many bulletins are broadcast, but these are very short. Many more cases are mentioned but without detail:

"It is quite considerable. It involves following police matters. But in news bulletins, explanations are simplified. They are short bulletins."

Technical and temporal constraints reduce the importance of legal news on television. On the one hand, cameras are prohibited in most courts. On the other, news bulletins are few in number, are short, and the competition from other sectors is considerable:

"If it is something exceptional or sensational, then everyone is there. But it is not the same as in the newspapers. It depends on the number of people. In the newspapers, there are journalists for all the beats, not so in television. One goes to the opening of a trial and at the end for the decision. For the rest, one follows the newspapers. The news report lasts twenty minutes, no more. Sometimes there is room, sometimes not. It depends on the event and the time allocated to it.

In some sensational cases, coverage is excessive, in others it is inadequate."

"Journalistic work in television and in the newspapers is not at all the same. We don't have a legal specialist. In television, there are technical and time constraints. One covers the big trials, the Lortie case, the Hell's (Angels)...approximately three or four times per month."

Finally, it should be noted that the importance given to legal news in the various media may vary over time. Some, for example, have had a full-time reporter in the past but do not have one now.

3.2 The Selection of News

When journalists are questioned as to the types of trials that draw their attention, and the criteria that determine their choice, they usually hesitate for a moment. Their answer, almost invariably, is this: we follow cases that are of public interest. They acknowledge that there are no simple and explicit criteria for determining what is of interest to the public. Their choices are guided much more by intuition, judgement and experience, rather than by a codified policy:

"There are no precise criteria, it is an editorial decision."

"It is more a question of intuition than anything else."

When pressed to explain what they mean by public interest, very few of them refer only to what interests readers or viewers. This is, of course, is one factor that they take into consideration. Legal news, like any type of news, must keep the attention of those to whom it is directed. Everyone, therefore, tries to take into account what he believes to be the target public of his medium:

"One speaks of the cases that interest the public."

"Journalists in general do not have a particular news policy with regard to legal news, nor a general news policy. The news priorities are different depending on the newspapers. For the Journal de Montréal, it is general news items. La Gazette is a newspaper that focuses more on economics and business. La Presse is general. Photo Police focuses on various news items concerning police matters.

The reader of my newspaper is the young man living in the Faubourg à mélasse, the young man on rue Panet...a crime at the Montreal Stock Exchange does not interest him. One must speak about what interests him, murder accounts and things like that."

This is why journalists in the Anglophone media admit that they pay special attention to trials which implicate a member of the Anglophone community or which specifically concern their public. But others acknowledge that they do not have very precise ideas as to who their readers are:

"By public interest I don't mean what interests or flatters our readers' instincts. I don't know who our readers are. I have not seen any research on that."

The public interest, therefore, is much more general and much more theoretical than "what the public wants". It is a notion which refers to what journalists perceive as worthy of being brought to the public's attention. Questioning them a little further, they explain what, in retrospect, are a number of criteria that they use as points of reference in this daily selection of what current events to report. What deserves to be brought to the public's attention are first "the big cases". They describe them in terms of the importance of the crime committed, the public notoriety of the perpetrator of the crime or of the victim, the sensibility of public opinion with respect to certain crimes, the spectacular aspect of the crime committed, the fact that the crime committed concerns the administration of the public welfare, the novelty of some trials, etc.

Some cases impose themselves from the start, without journalists having to ask many questions. This is the case, for example, with the Brigham case concerning the explosion at the Central Station, the Rock Forest trial, the Claire Lortie case, the charges against Craig for impaired driving, etc. Here, one must quickly make an exception of the *Le Devoir* newspaper which, according to the majority of the people interviewed, strictly speaking no longer provides legal news, or at the very least, practices a very special type of legal news reporting. We will return to the special case of *Le Devoir* later.

Let us now quote some journalists from the daily press, as they attempt to define or describe the manner in which they go about selecting the cases about which they speak:

"Murder cases are generally followed. Prosecutions involving public figures: senior civil servants, elected officials, doctors, lawyers...Those people who deal with the public while exercising their profession, who provide a service to the public.

Fraud which affects the public weal.

Cases which raise legal issues that are of public interest. Cases of sexual assault, for example, are followed more closely. It is thought that by rendering these decisions public, this may help clean up this area. Cases of police brutality."

"Central Station was an obvious case.

Arson, major fraud.

When the crime causes great horror.

Small cases -- divorce, child custody, prosecutions of professionals, dentists, doctors -- may interest someone. Even small cases may be big cases.

What interests people. What is rare."

One must be careful not to believe that the public is only interested in morbid stories. To do so would be to generalize to the whole what is undoubtedly characteristic only of a minority. The reader is very interested in cases which refer to situations in which he is involved or in which he is liable to be involved: problems

with a dentist, a doctor or a lawyer, for example. This interest is evidenced by the calls that some reporters said they received from their readers. Of the three or four calls that they receive per week, the majority are to request practical information concerning this type of case: a detail on a decision, the name of a lawyer familiar with these cases, possible appeals, etc.

It is quite obvious that the notoriety of the people involved is one of the main criteria which enable journalists to identify those cases that are of public interest:

"Corporal Lortie, Morgentaler, Marchessault, Brigham, Dionne, Ménard, Claire Lortie, etc."

Certainly one will speak more about a murder where the victim is a bishop, for example, than a mundane case where a chap has killed another guy in a drunken brawl. Or, if the accused is a senior civil servant who is alleged to have committed a major fraud...or if he is a doctor who is accused of "malpractice"...or a politician.

"The Lortie case was followed. It is clear that one could not fail to do so. On the other hand, Mr. Smith's killing of Mr. John Doe will not necessarily be covered.

The sensitivity of public opinion toward certain issues ensures that certain types of trials are discussed more than others. Included in this category at the present time are charges for drunken driving, cases of sexual assault, child kidnapping, and the activities of motorcycle gangs. This sensitivity may have several causes. It may be due to the particularly repulsive nature of the crime committed, a campaign orchestrated and conducted by police forces, government willingness to punish certain offences more severely, a social movement for the protection of certain social groups.

Everything that has to do with the administration of the public welfare also commands attention. Not only fraud cases, but also actions that question the behaviour of civil servants with respect to the public. Thus special attention is paid

to cases of police brutality, as shown recently by two or three trials that have aroused wide interest:

"Police officers are supposed to protect citizens...

We know that there are several cases of abuse and that there is a system of protection among police officers. There are some who brutalize citizens and who then charge them with assault. And they commit perjury to protect each other. This system must change and police activity must be more supervised by the Police Commission or in some other way."

"The public must know that police officers can also be convicted."

Another determining criterion that helps journalists make their choice is novelty. Precedents are usually followed carefully. The most recent example to date is the Craig trial. It is the first case in which the new law concerning impaired driving will be applied. The media are interested in knowing how justice will proceed in this case which will become a precedent, what sentence will be pronounced, etc.

Novelty is the basic rule of all journalistic activity, in the legal field as in other fields. Journalists try not to weary their readers, listeners or viewers by taking care not to systematically report identical cases that quickly become uninteresting.

Finally, as a last criterion we should note a certain "herd effect". The work in pools, imposed by the great number of cases to be covered by a limited number of people, produces some uniformity of the legal news contained in newspapers and in the other media that consult them, at least with respect to the subjects, if not the manner, in which they are dealt with. The media that do not keep permanent legal reporters acknowledge "that they cannot ignore cases that every one is talking about".

In summary, one could say that journalists carry out their selection by trying to

identify what in legal current events is of public interest. To do this, they use one (or a combination) of the following indices:

- what interests their public;
- murder cases;
- trials that implicate a public figure;
- cases that concern the administration of the public welfare;
- cases that constitute legal precedents;
- crimes that are striking because of the horror that they generate;
- cases that interest the public because they refer to problems that everyone may encounter in daily life;
- issues to which public opinion is particularly sensitive;
- original or amusing cases.

What has been said above concerning the selection criteria applies of course to the various media in different ways, depending on the importance that is accorded to legal news. Dailies make more extensive use of the criteria because they give more space to news originating from the law courts. Radio, as mentioned, is limited to very brief bulletins, which enable it to speak about more things but very rapidly. As far as television is concerned, it applies a much more drastic form of selection. Only very "big cases" get through.

Two exceptions to the above should also be noted: **Allo Police** on the one hand and **Le Devoir** on the other, but for very different reasons.

At **Allo Police**, the selection criterion is very simple: this weekly covers all murder stories throughout the province:

"There is nothing arbitrary about us. We cover systematically all murders committed in Quebec. We also cover stories that are highly visible, such as that of the two sisters who are accused of drug trafficking in Italy. At la Presse and at the Journal de Montréal, they give more prominence to murders that police officers want discussed. We talk about all murders, without exception.

One might question that choice. Why murders? It is a long story...It goes back to the newspaper's beginnings. But once this choice is made, there is no longer anything arbitrary about it."

But **Allo Police** admits that, because of time and money, it covers fewer and fewer trials:

"Court proceedings no longer have the same importance as before. There is a lot of plea bargaining. Trials are covered less and less. Since we cover all murder stories throughout the province, it costs too much to send a reporter on assignment to Val d'Or to learn that there will be no trial because an agreement has been reached between the Crown, the defense and the judge. We also run a business which must cover its expenses and make a profit."

At the **Devoir**, the situation is entirely different. This newspaper distinguishes itself from all other media in that it does not provide legal news as understood by the other dailies, for example. Its uniqueness resides, among others, in the selection of subjects which it decides to deal with. Its priorities are fundamental rights and freedoms and Supreme Court decisions:

"Le Devoir has not been interested in traditional legal news. This is in accordance with its founding manifesto. It covers everything which, in legal affairs, concerns public morality, the good functioning of government, and the directions which society is taking. It is a selective coverage. It does not cover repetitive cases. At the present time, our priorities are to cover what pertains to fundamental rights and freedoms and Supreme Court decisions."

Since priorities differ, so do the selection criteria. And the slant is also different:

"One looks for what is revealing about the actual functioning of justice. That is what interested us in the Marchessault case, for example. We force the system to clean up its act. If there is complacency in the media, then corruption will be widespread. Another example is the Rock Forest case. It is the functioning of the police as an institution which is in question. The Lortie case was a different matter. Le Devoir intervened in this spectacle and condemned the Crown's behaviour. We followed the case from the point of view of the functioning of justice.

All facts are significant. But there are some who treat them without drawing out their significance. Here, we rather tend to look for the significance."

3.3 The Coverage of Sentences

Reporters do not report all the sentences pronounced in the various courts, nor do they follow all the trials that are taking place there. But the general practice is to do a follow-up, that is to report the decisions on cases that they have talked about previously. There may be some exceptions, such as when the sentence is pronounced a very long time after the trial or when for some reason or other the desk chief has decided that there is a lack of space or time. But according to everyone, these exceptions are relatively rare.

The selection criteria for the covering of sentences, therefore, are the same as those which apply for the covering of trials. Occasionally, however, some sentences are covered while the trial was not covered. This happens mainly when the decision constitutes a sort of precedent and when the importance of the case was not suspected when the proceedings began. But even here, these cases are relatively infrequent:

"It may happen that a decision is issued and that we were not aware that the case was interesting. Decisions do contain some surprises. At a given time, a decision may be delivered whereby the judge gives a new interpretation of the Criminal Code with respect to a particular point,

either by virtue of the Charter of Rights or by virtue of something else, or a judge reproaches the Crown Prosecutor or the Government of Quebec or, in passing, invalidates a law. There are some decisions that are more interesting than the trials themselves."

Obviously, when there has not been a trial because plea bargaining intervened before the beginning of proceedings, the sentence may still be reported if the person who is sentenced or the details of the crime draw the journalists' attention.

3.31 News

The great majority of the people interviewed (10 out of 14) described themselves as journalist-reporters whose only role is to report the facts as faithfully as possible while refraining from any commentary. As far as they are concerned, the two types of activities (news and commentary) are separate and almost incompatible within the same person. For some it is a matter of professional ethics, for others it is a matter of pragmatism: one must be careful not to cut oneself off from one's sources:

"Commentary is a job for editorial writers. We cannot do it because those who inform us would be on our backs."

"I cannot present myself before a judge one day to obtain information and then the next day take the liberty to criticize what he does. As far as I am concerned, it is a rule which I have been following for a long time, even when I worked in other news sectors. I refrain from any judgment. I do not believe that one can do both at the same time."

The other four write both news articles, and analysis/commentary pieces or editorials. For three of them, there is a clear difference between the two types of articles. Analysis/ commentary pieces or editorials are usually clearly identified as such, while their news articles are limited to the presentation of facts. The fourth did not make explicit reference to this distinction.

Here again, the situation varies according to the media. In television, there are neither commentaries nor editorials. In radio, one person out of three takes the liberty to comment about the sentences he is reporting. Another interviewee, whose functions are limited to news, acknowledges that the private station that employs him also broadcasts editorials, which three or four times a month deal with subjects that relate to justice. These editorials, however, are written and read by other persons. In the print medium three out of eight people on occasion write editorials or analysis articles on legal issues. With the exception of the **Journal de Montréal**, all dailies or weeklies occasionally publish editorials but in the majority of cases it is journalists other than legal reporters who are in charge of them.

The majority of the persons interviewed, therefore, are content to factually report the sentences in trials that they followed, or that other members of the pool to which they belong have covered. The typical article covering a decision, if one may use the expression, generally includes the following components:

- brief review of the relevant elements to describe the crime committed and the development of the trial;
- guilty verdict or acquittal;
- penalty imposed;
- presentation of the elements contained in the sentence pronounced by the judge or the arguments invoked by the lawyers in their addresses to the court so as to enable one to understand the sentence imposed.

The great majority of reporters refrain from evaluating whether the sentence was too severe or not severe enough, either because they consider themselves incompetent to do so or because that is not part of their role:

"We are not lawyers, nor are we judges or commentators."

"We merely report the facts. As far as commentaries are concerned, they are left up to the editorial writers."

"One never comments in news articles."

"It is difficult to evaluate the severity of a decision. There are so many factors that must be taken into account."

When reporting sentences, most of the journalists from time to time make reference to the maximum and minimum penalties provided for a given type of offence. But they avoid making this a regular practice. Several reasons are given for this:

"It would be tedious and boring to do this on a regular basis. If the robbery involves a life sentence, and you remind your audience of this every time, then you give the impression that the judge is exercising great leniency. This is done for questions where one assumes that the readers do not know it because we ourselves must go and read the code. To emphasize this point would be giving the impression that it is the only factor or the main factor that must be taken into account."

"These things are usually mentioned at the beginning of the trial rather than at the end."

"If we were always to mention the maximum penalty provided by the code, this could give the impression that the judge is not severe enough."

It is the same with references to the past record of the person being sentenced. Journalists do it occasionally, when they deem it relevant, but it is not a general habit. Here again, judgment is not exercised by referring to well-codified rules, but rather on a case-by-case basis. However, two constants emerge from the conversations with the persons interviewed. On the one hand, all are aware of the prohibition that applies to cases before a jury and they limit themselves to what is explicitly said in court.

On the other hand, relevance is determined in terms of the type of crime committed: one will recall someone's legal past only insofar as the previous sentences have some bearing on the current sentence:

"If someone is sentenced for murder, we will not refer to whether he has already been sentenced for drunken driving. On the other hand, if it is the twelfth time that someone is sentenced for armed robbery, then we will say so."

"In jury trials, one cannot do it. One limits oneself to what is said before the jury. At the end, after the decision, one can do it."

In cases where the accused was on parole when he committed the crime for which he is convicted, journalists admit referring to it in their articles covering the sentence "because generally it is something which is said in court, by the Crown counsel or by the judge himself". The same attitude applies concerning references to recidivism or to a first offence: it is reported insofar as it is mentioned in court. Here, one touches upon one of the golden rules of journalist-reporters: they write certain things to the extent that they have been said by someone else. Their account is essentially a reported account. On several occasions during the interviews, this sentence was repeated like a refrain:

"If one of the lawyers said it, if the judge made reference to it in his decision..."

All of the journalists interviewed are very aware of the dangers to them if they were to show contempt for the court. They take precautions by making abundant use of the conditional and by letting others speak, by quoting their remarks.

The credo of journalist-reporters is to inform their readers, listeners or viewers

well so that they can arrive at a judgement themselves. According to them, the facts speak for themselves:

"The role of a daily is to report. I do not believe that we have a moral or educational role. But people do end up understanding by watching the news, cases that are repeated..."

3.32 Commentary and Analysis

While they do not make commentaries and refrain from evaluating sentences, and while some are careful not to use any method that could allow an opinion to show through, others (4 out 10) admit that it is possible to have certain things seen or understood indirectly. They talk about putting things in perspective, in context, and the choice of presentation. By using certain means, they can occasionally get messages across without mentioning them:

"Sometimes the facts speak for themselves. One does not need to comment. If one can organize the facts in a certain manner, one does not need to comment. One can bring one fact to light rather than another. It is more effective than commenting."

"I can do it when it is glaring, when a sentence seems to me to be totally inadequate. But one must be careful not to show contempt for the court. One does not make all out charges. Just a small word to suggest that one does not agree. In flagrant cases, one will find the means to say it without saying it outright. It is easy to do by making comparisons. Two articles will be published side by side. The contrast speaks for itself: justice for the rich as opposed to justice for the poor..."

Of the four journalists who say that they explicitly comment on sentences, only one does so over the air on a radio station. The other three belong to newspapers and express their comments in articles that are clearly identified as commentary, be they editorials or news reports. Radio journalists limit themselves to an evaluation of whether a sentence was too severe or not severe enough by referring to the

sentences suggested by the counsels and if possible by comparing them with similar cases.

Of the three journalists in the print media who do comment, one deplores not being able to do so very often due to the lack of time or space. Another admits doing so only rarely due to a lack of information, "because I was not there". The third comments regularly:

"We comment on each sentence which interests the public and which may be controversial, each sentence that can serve as a criterion or bench mark."

The evaluation criteria are not set in advance:

"There are no predetermined factors. Evaluation is on a case-by-case basis, as does the court itself. Personally, I always have reservations about sending someone to prison. As far as I am concerned, prison should no longer be a sentence but a means of ensuring the safety of society. Experience has shown that the therapeutic or preventive value of prison, for the majority of people, is practically nil. On the contrary, it aggravates the cases of the majority of those who are sentenced."

Sometimes reference is made to the maximum or minimum penalty. Occasionally this is done in an article which is in the form of an analysis. But not to cast blame on someone. It has been done in cases of drunken driving."

For this journalist, the discussion of sentences is essential in a democratic society:

"The sentence is of public interest. One can discuss it. Sometimes one even suggests it. That is part of honest democratic debate."

All journalists who regularly or occasionally make analyses or comments, directly or indirectly, do not recall ever having been too severe in evaluating a sentence. None of them has ever regretted his judgement.

3.33 Coverage of Plea Bargaining

Most journalists, when the occasion presents itself, report the results of plea bargaining. This practice has become so common (according to some, 80% of cases are settled in this manner) that they inevitably mention it when reporting some sentences. But few explanations are given and little analysis is done:

I have never written an article to explain what it (plea bargaining) is. But one inevitably mentions it. Eighty percent of cases are settled in this manner. We mention it in the daily when it seems important to us. We do not have access to the details, only to the results."

Here again, more reference is made to it in the newspapers, a little less on radio and practically none on television. All the persons interviewed acknowledge the need for such a practice in order to save time and money. Without plea bargaining, the administration of justice would cost even more to taxpayers and the delays in having cases heard would be much longer.

But most of the journalists are disturbed by the secrecy which surrounds plea bargaining. This practice should be set out more clearly and the elements of proof should be made public. The journalists think that there is a serious danger that a large part of the administration of justice will be done in secret:

"What is frustrating is that a good portion of the administration is done in the offices, away from the public."

"It may be mentioned. But it is not a public practice. While the details are ignored. In principle, it is not reprehensible because of the savings. Otherwise there would be serious delays. It is a saving of resources. The danger, however, is favouritism, political influence, police vengeance or, on the other hand, discouragement of the police which sees its efforts wiped out when it has established solid evidence. It renders secret what should be public. There should be a regulation which would govern plea bargaining. One should have access to the evidence. There should be no plea bargaining prior to the preliminary investigation. This should not

happen. Secret agreements between lawyers undermine the credibility of justice."

"It is a tactic which I don't like very much. Justice should seem to be done. The public is all mixed up. It is the image of justice that suffers. It is efficient but the general public is confused. There is no justice without publicity. The judges themselves acknowledge it when they speak of setting an example."

The public does not know enough about it. The press should explain it. It does not do enough of it. We don't have access to the information. We should do more of it. We realize that our system tolerates this type of relationship between the Crown, the judge and the defence, something which in my opinion is not always very healthy."

Plea bargaining is becoming an increasingly common phenomenon in the Canadian administration of justice. In the past, it was a hidden practice, something which one did not dare acknowledge. The journalists admit its usefulness. But they are of the opinion that it should be rendered more public and regulated in such a way as to avoid its inherent dangers. If this were done, justice would gain in credibility.

4. NEWS POLICY, CODE OF ETHICS AND PROFESSIONAL RULES

Most media do not have a written news policy. Radio-Canada (radio and television) has a document entitled Politique journalistique/(Journalistic Policy). Télé-Métropole and the TVA Network also have put the main elements of their news policy down on paper. **The Gazette** has adopted a code of ethics and has an ombudsman. The journalists at the **Devoir** refer to the newspaper's Manifeste de fondation (Founding Manifesto). But none of these documents contain special clauses specifically applicable to legal news. They are general policies that often touch more on form than on content (forms in which reports are presented, style, length of articles, etc.)

Twelve of the fourteen persons interviewed are unionized. The collective agreements contain some clauses which define the conditions for the exercise of the profession, but nothing specifically dealing with legal news. Some clauses may, however, be applicable, particularly the settlement of conflicts of interest and the protection of journalists in cases of judicial prosecution that have a bearing on the exercise of their functions.

Several journalists expressed reservations with respect to the possibility and usefulness of drawing up a precise code of ethics to govern journalistic activity. According to them, the guidelines provided by the Press Council, the collective agreements and the law are more than sufficient. A code of ethics would be condemned either because it would deal with generalities or because it could not be put into effect or because it would be paralyzing if it were too precise.

According to all the court reporters interviewed, the main regulations governing the exercise of their profession are the Criminal Code and the Civil Code. The rules are precise and the prohibitions are numerous: prohibitions against publishing during preliminary investigations and in any other circumstance decreed by the Court; the prohibition to publish the names of minors who are accused, or anything that could enable one to identify them; the prohibition to publish anything that has not been said before the jury; the possibility of prosecution for defamatory libel in civil court; the possibility of being in contempt of court; the possibility of provoking a mistrial, etc.

The journalists are well aware of these provisions of the law and they conform to them in their practice. According to them, it is only in the regions, where some journalists lack experience, that gaffes may be committed.

The definition and application of the law on contempt of court, however, raise problems for some of them. They see it as a means of unduly intimidating journalists:

"It is a means of intimidating us. When we are found to be taking sides, when a judge accuses you of being in contempt of court, your boss calls you and tells you to go "easy" since this matter will not be settled. Then they have obtained what they wanted."

Another flares up against the provisions of this law:

"Contrary to what usually happens in our judicial system, you are presumed guilty. And the person who accuses and judges you is one and the same. It is up to you to prove your innocence before the same person who accuses and judges you."

In addition to complying with the formal rules written in the law, the news policies and codes of ethics, the journalists all seem anxious to provide news which is

as complete as possible while respecting the reputation of the persons concerned. This is something which is not always easy to do. Several of the reporters interviewed expressed their concern with respect to the dilemma which they often face regarding whether or not to publish the names of persons involved in a legal case. Is it in the public interest that the name of such a person be published? Is there not a danger of unduly damaging that person's reputation? On the other hand, if one does not mention it, is one correctly performing one's role to inform and forewarn the public?

"Should one give the names of people who have been arrested for indecent behaviour in a public place, for example? There was a meeting on it. It was decided not to name them. I would have preferred that some of them be named. Among them there was a school principal. That individual is a public figure. He is still working. As a parent, I would not like to have my children attend a school run by someone who behaves as a sexual deviant. You might say: he has not yet been convicted. True, but the main evidence for the charge is a video. One can see them..."

"This guy has been arrested for impaired driving, and for running down three people. He has not yet been convicted nor has he been charged with anything. Nevertheless, his name is in all the newspapers, in all the media. He has been dismissed by his employer, and he probably does not have very many friends. Perhaps in doing this one is causing irreparable damage to his reputation."

"Must I give the name of an individual who is convicted for involuntary manslaughter, who is crushed by his crime, and who will have enough trouble putting himself back together again? I decided not to. But in another newspaper they did give his name. I tend to give names as rarely as possible. What count for me are the social phenomena. Whether it is this or that person who is involved is secondary for me."

In another connection, several journalists emphasized that they avoid embarrassing details and a vocabulary which is too emotional or too dramatic:

"There is a certain vocabulary which is not tolerated here."

"The guy who killed his wife, cut off her ear, mutilated her...I did not give the details. We avoid that sort of thing."

"We are not here to crucify people. We are here to report what is of interest to public opinion."

Finally, unlike in certain American states, here there are no agreements between journalists and the courts which regulate the manner in which legal news is reported. One does note, however, some recent initiatives which facilitate improved relations between the press and those who administer justice. In Quebec, the Bar has been organizing for some time now an annual conference on "the law and the press". In Montreal, a chief justice recently invited law reporters to an informal meeting to exchange views.

5. PERCEPTIONS AND OPINIONS OF JOURNALISTS

The third section of our interview format focused on the perceptions and opinions of legal reporters concerning justice, its administration, and the role and influence of the media.

5.1 The Severity of the Law and Its Application

All the persons interviewed demonstrated considerable caution when asked to evaluate the degree of severity of the law concerning various offences. The majority said that they were not sufficiently competent to answer this question:

"I am not in a position to adequately answer this question."

"There are criminal jurists who could answer these questions. I tend not to judge. I do not have this mental disposition."

This being said, the majority did venture to offer, prudently if not timidly, a few opinions and suggestions concerning, for example, the excessive severity of prison sentences imposed for first-degree murder, for crimes without direct victims, and for the possession and consumption of mild drugs. On the other hand, some maintain that the law must be severe toward cases of sexual assault and brutality involving children, and that perhaps it should also be severe for white collar crime:

"I find the sentence for first-degree murder too severe. I find life imprisonment, with a minimum of 25 years, almost more severe than the death penalty. On the other hand, in cases of sexual assault, judges could not bring themselves to impose heavy sentences until some years ago."

"Certainly there are excesses on both sides, (too much and too little severity). But prison should be reserved for those who have demonstrated that they are a threat to society."

"Crimes without direct victims, such as prostitution, should be decriminalized. White collar crime, i.e. business crime, is not punished severely enough."

"The use of drugs such as marijuana and hashish should be suppressed less severely. On the other hand, I agree that as far as the heroin traffic is concerned, the law should be severe. Cases of police brutality ...The work of police officers should be supervised more closely."

"There is a sort of nonchalance with respect to crimes in which children are abused, and in cases of sexual assault. Justice is not a matter of vengeance, but there is a lack of respect toward the victims whose lives are shattered by such criminal acts."

But more than the law itself, it is its application which sometimes raises questions for journalists. They point out cases of too much tolerance, and especially cases of unjustified severity which to them seem to afflict certain classes of the population more so than others:

"This case in Ontario where a young man killed three members of the same family. He was sentenced to three years in prison. One asks oneself if justice was done."

"Justice is often too severe for people in humble circumstances who have committed petty crimes and who present themselves in court without a lawyer. There is a disproportion in the sentences for petty cases."

"There are sentences imposed for banal crimes that are heavy. I will give you an example...of things that we don't talk about in our media because...there should be a way to discuss those things. We should talk about them but we don't. Take for example a poor woman on welfare -- I am thinking of cases that I have seen -- who allows herself to be abused by a judge because she wrote an N.S.F. cheque to Simpsons-Sears to buy some children's clothing. A woman who supports a family, who has a meager income on which to raise four children, who is obese, is of average intelligence, and who does not have the chance to have a line of credit like all of us at her caisse populaire which would automatically cover N.S.F. cheques. And the judge reproaches her for it, threatens her and says to her that if she does it again she will go to prison...I think that in that case there is an obvious social problem that is not being dealt with."

"Judges have the discretion to adjust sentences. From time to time, there are sentences that one can consider as exaggerated. But that depends on the judge, not on the law. Are some crimes not punished severely enough? The law is always severe enough. Sometimes it is the judges who are not."

"There are some judges who give more severe sentences in order to short-circuit parole. Whether sentences are too severe or not severe enough is a question of timing, of social pressure. There are also individual factors regarding judges; some are more severe than others. They are human beings, they have emotions too. It is said, for example, that a judge who has been robbed risks being more severe on robbers. There also are regional differences. In a small city, the judge is a more important figure. He has a more visible social role. Public pressure is stronger."

Asked if the general trend among judges is toward severity or leniency, the journalists gave detailed answers: it depends on the judges, and it also depends on the type of crime. But they maintain that, overall, judges are showing more leniency than in the past. They note the emergence of a new generation of judges, who are younger and more open to alternatives to prison, such as community work:

"There are various currents among judges. Some judges have the reputation of being more severe, others of being less severe. Some judges do not yet seem to have understood human psychology. There are others who should have never been appointed."

"It varies. It depends on the directives from the Ministry. There are periods when judges are very severe, and then it changes. Hold-ups, for example. There was a time when sentences were very heavy; they are less so now. At the present time, sexual crimes and impaired driving are severely punished. It depends on the pressures to which judges are subjected."

"Judges are not too severe in their sentences. The case is rather the opposite. But it is not my job. We report the facts."

"Myself, I find that they are very severe, precisely because of public opinion. The current trend is toward greater severity."

"It is less severe than in the past. In the past, decisions were not severe, but they were fair. Since the seventies, decisions have not been as severe. Not severe enough in my opinion. They are too liberal. One no longer talks of rights, never of responsibility."

"The general trend among judges is toward leniency. There is a lot of plea bargaining. It is becoming almost alarming."

"Whether there is more or less severity depends on the crimes. It is on the rise for cases of sexual assault, for child abuse crimes, because these

are revolting. It is on the decline for involuntary manslaughter, because there is a lot of plea bargaining."

The majority of the journalists not only seemed to offer nuances in their views on justice, but generally they also seemed liberal. Only one said that he was in favour of restoring the death penalty. Only two or three seemed to deplore the current trend in the judicial system toward greater leniency. Several expressed skepticism with regard to imprisonment. They are of the opinion that prison should be reserved only for criminals who represent a threat to public safety and that more adequate means should be found to ensure the rehabilitation of those who can be rehabilitated. Finally, most of their suggestions tend more toward leniency than toward severity.

With regard to disparities between sentences for similar crimes, the legal reporters reflected the same attitude. Only one, after having weighed the advantages and disadvantages for a long time, finally said that he was in favour of a system that imposed identical sentences for similar offences, without consideration for the circumstances that characterize each individual case:

"Finally, If I had to vote, I think that I would vote in favour of something which does not take into account the condition of the individual, but which is very objective. It would be the same for everybody. Even the criminals would know what to expect. Otherwise it is so biased. It depends on the mood of the judge, the ability of the lawyer, etc."

All the others acknowledge that justice cannot be reduced to a mechanical application of the law. They admit the disparity is a manifestation of justice itself. Of course, they are sensitive to certain cases which to them seem aberrant. Earlier we saw how they might express this directly or indirectly. But in general, disparity to them seems a phenomenon which is completely acceptable. It is normal for the

judge, when pronouncing his sentence, to take into consideration the previous record of the accused, his personal situation and the circumstances of the crime. And almost all of the journalists said that they avoid comparing sentences in their articles:

"A sentence depends on so many factors that it is difficult to compare it. Myself, I try to refrain from making comparisons. The diversity is completely acceptable. I am not saying, however, that some sentences are not unfair, but that is not for me to judge."

"The disparity between judgments may scandalize the public, but not reporters. Judges merely apply the law, they administer justice. The disparity between sentences is not a bad thing."

"I know of only one journalist who has actually written articles on the disparity of sentences in Quebec. Of course there are differences. There are regional variations, individual variations...it depends on the lawyer's ability, the judge's personality, and the victim's identity."

"There is a disparity of sentences. But it is something personal. And as a journalist, I do not have the right to express my thoughts on judgments."

"I did it once at the beginning. And I was told: Be careful, you may be held in contempt of court for that...I don't know whether it is true or not. One might say that it made an impression on me. But I am not led to do it in my articles. I do not make comparisons with other cases. It is not that easy to make comparisons...there are always differences."

In summary, therefore, the legal reporters noted that the disparity of sentences is a fact and entirely acknowledge its legitimacy. Disparity does not meet with disapproval among them, except in rare cases where the decision seems unfair to them. Articles which make comparisons between sentences are very rare exceptions. As we saw earlier, they feel that this is not part of their role and they believe that the public is able to draw its own conclusions.

Most of the people interviewed admit willingly that justice should be more severe in cases where the accused committed a crime while on parole, which according to them already happens in the majority of cases. Several, however, make a distinction:

provided that the alleged crime is related to the offences committed previously. Most of the journalists mention this element in their articles insofar as the decision explicitly refers to it, which is usually the case:

"No, the sentence should not be automatically more severe for someone who was on parole. There should not be a double sentence."

"I believe yes. The deterrent effect is still there. The fact of sending someone to prison does not necessarily settle the matter. In some cases the severity settles nothing. One must be severe but one must leave some hope. I am not sure that the judicial system is the most capable of solving this problem. It is much more a role for the Parole Board. The board members know best when someone may be paroled. And our role is to act as watchdogs over the Board. Of course, this is not to their liking when we mention that someone committed a crime while he was on parole. But there are flaws in the system and someone must say it in order that it may be improved."

5.2 Relations Between Judges and Journalists

The majority of the journalists are of the opinion that, generally, judges explain well the decisions that they render. Sentences are not always written down. Indeed, these are the exception (they estimate that more than 80% of them are not written down). But they can always obtain a copy of the records of the proceedings. According to them, therefore, judges generally justify their decisions. At least the majority of them do so, but there are exceptions.

"It depends. There are judges who are more voluble, and there are others who are less so. But in general, they give good explanations."

"One finds something of everything. But usually in the decisions one finds elements of proof. Generally, the decision is almost complete in itself."

"There are judges who explain their sentences better. They are almost the majority."

"Judges explain their sentences well, especially in major cases. They do so less well in small cases even though these constitute 85% of their role."

One interviewee hoped that there would be more written decisions, something that would enable him to summarize and report them. But another is of the view that this would be of little use. It should be noted that the former belongs to a medium which does not have a permanent legal reporter, while the latter spends all his time at the Law Courts.

Meanwhile, five journalists stated a number of grievances regarding the behaviour of judges when dealing with the press. They hope for more openness and understanding on their part:

"Judges operate as if the media did not exist...There are judges who say: we don't have to explain ourselves. Judges must explain themselves, they must explain their sentences. If sentences were more detailed, written, and available, they would be published."

"Judges rarely explain legal jargon...the meaning of certain ordinances, for example. They are respected. We only want explanations. Sometimes they don't give them to us."

"Sometimes judges comment on my articles. Generally the comments are negative. There is one, among others, who is really spurned by journalists...and, one must say, also by lawyers...In court, he has always spoken peremptorily to me. I would like to answer him, but I cannot. He has the long end of the stick...But in general, judges do not like the press."

"I have already asked a question of a judge in court, because I did not understand. He answered me, but a little reluctantly. We are not made to feel welcome when asking for information."

"Judges and lawyers must not consider justice as their own private thing. They must take journalists into account and facilitate their work by providing copies of their decisions, for example."

5.3 Evaluation of the Role of the Media

When invited to express their overall opinions on the manner in which the media discharge their role in the area of legal news, the journalists gave a variety of opinions. It is difficult to give an overall picture of those opinions. Three did not comment because the subject could not be discussed during the interview. Six were rather positive, four rather negative. Another made some specific criticisms without giving an overall judgment.

Let us begin with the most positive ones. Even among them, the overall satisfaction is tempered with suggestions and comments:

"It is difficult to answer such a question because there is always room for improvement. There could be more coverage of the Supreme Court, for example, to which we devote little or no time."

"In my medium, we devote considerable space to legal news. I would not like that to increase. There are other sectors that are equally important. Those who, like me, attend the Law Courts,...find it difficult to judge themselves. Those who come only when there is a big case, I don't think that is right. The guys from Radio-Canada recently came for the Hilton case, for example. The Hilton case is not a big case. A small boxer who got himself arrested for drunken driving, that's not very important. I find that silly. In that sense, they are not doing their job. A newspaper like the Devoir should give more importance to legal news."

"Given the resources and means at our disposal, we're doing well. But not very many resources are allocated to news."

Of the other two who are more or less satisfied, one is satisfied because he notes a certain diversity, but the other qualifies his judgment precisely with the fact that diversity is reduced when journalists operate as a pool:

"There are many media, each one with its own mandate. There are gossip newspapers. La Presse provides good news, so does the Gazette. Le Devoir does its job poorly. There is diversity."

"Yes. The media provide good news. But we are judged badly because of the pool phenomenon. There are some things that escape us. Everyone has more or less the same feeling about a case."

Now let us turn to those who are pessimistic. It should be noted that they all belong to media that do not assign full-time reporters to the Law Courts. One of them gives a severe judgment of his own media. The other two include all the media in their evaluation:

"We perform our task poorly. We are there at the beginning and at the end of a trial. As for what happens in between we rely on the news provided by others. It is even possible that the reporter who covers the sentence is not the same one who was there at the opening of the trial. It is dangerous to do a report without knowing the elements of the trial. We lack information. It is not honest. This is the policy in the majority of the electronic media. In newspapers it is not the same."

"The performance of the media in the field of legal news is a catastrophe... Journalists have totally lost control of the news. They report the things that police officers want discussed...At the present time, for example, there is a lot of talk about the kidnapping and murder of children. Why do we talk so much about this in the newspapers and on television? Radio-Canada broadcast some special programs on that. Even Passe-Partout talks about it...I have compiled the statistics on the murder of children for last year. There are very few murders of children by maniacs. These are marginal. It is mainly members of the family, the father or an uncle, who kill children. These are family tragedies. Another example: why all this fuss about the Hell's Angels? This began when the Ministry of Justice was running a campaign for the leadership of its party. It was useful for a minister to appear to be taking on the bad motorcycle gangs. Police officers wanted people to talk about it, that's clear. They distributed photos and information to journalists. They don't usually do this..."

"No. It is not satisfactory. There are some things that are covered too much and others that are not covered enough. Perhaps too much importance is given to criminal cases and not enough to civil cases. No attention is paid to administrative courts. The Supreme Court is practically not covered by the Quebec media. Court coverage is too traditional and antiquated. There are not enough resources. There should be two or three full-time persons. The public is interested. There are important cases that are not covered and that should be covered. There should also be more journalists who are informed about institutions and who could understand what is going on."

The person who did not express an overall judgment stressed the lack of explanatory news, thus echoing the views of some of his colleagues who hoped that there would be more articles and reporting of an analytical nature:

"There should be more explanatory articles. For example, on what plea bargaining is. To help people understand the context. Another example: the fact that psychiatric treatment cannot be imposed by the judge if the accused does not care for it."

If one wanted to derive some guidelines from these divergent opinions, one could say that for about half of the people interviewed, the legal news broadcast by the media is relatively satisfactory. For a strong minority, there are considerable shortcomings. Even those who appear overall to be satisfied identify several areas that could be improved. It is difficult to find consensus among the various comments that were made to us, but it seems that the main criticisms are the following:

- Those who work regularly at the Law Courts are of the opinion that those media that only occasionally send someone to attend court can hardly do a good job. The media covered by this criticism is mainly the electronic media. This is a fact which comes out both in informal conversations and in the interviews.
- The operation of journalists as a pool raises questions in the minds of some journalists who do not work regularly at the Law Courts. They acknowledge that it is an economic method of operation but doubt that it could result in a real diversity of news.
- Several interviewees question the meager importance that, according to them, **Le Devoir** gives to legal news. This newspaper seems to them to have neglected strictly legal news and opted in favour of general news concerning justice.
- Some deplore that the Supreme Court is covered so little.
- Several are of the opinion that the media should give more importance and resources to legal news. Some issues are not covered, or are insufficiently covered due to a lack of means.
- Television people are of the opinion that a major obstacle to the coverage of legal news is the prohibition of cameras in the courts.

- Some hope that the traditional approach to legal news will be questioned.

As for a possible role of the press in the prevention of crime, all the people interviewed do not consider that this is its main role. The typical reaction is to remind one that the essential mission of the media is to inform. And to add that if they can also help educate, that much the better. But that is not an objective which is pursued as such.

All the journalists acknowledge that it may have happened that a colleague charged an accused. But that is not something that happens very frequently, and it is becoming increasingly rare. One of the deans among legal reporters did not find more than ten cases throughout his career which spans forty years. A younger colleague feels that this happens mainly in the regions, to journalists without experience in the legal field. According to some, it is not a deliberate practice on the part of the author but rather an unintended effect. According to others, there is a certain percentage of journalists who "seem preoccupied only with filth, and who are always on the lookout for scandals", who "enjoy crucifying certain politicians in a vengeful manner". According to the dean mentioned earlier, this practice has certainly diminished now that journalists are unionized and better paid.

Some of the persons interviewed approached the matter more globally:

"The danger is when some facts are too flagrant, when everyone in society talks about them...Perhaps we too, on those occasions, may have jumped in and been too critical. Rarely do newspapers make charges. When they do make charges, it is because they have been informed so that they can do it. The media do not have the means to question an entire investigation. Often charges are laid during the coroner's inquiry. One only has the police version. The media only report. They don't have the time to cover the trial. There is plea bargaining. And finally, journalists never obtain the defence's version."

"During big cases, journalists may occasionally exaggerate. But it is because there is such a disproportion between the willingness to speak on the part of the Crown and the defence. Often the defence does not want to talk in order not to prejudice its case before the Court. The police and the Crown talk more. This means that they are covered more."

As for whether the news broadcast by the media can generate prejudice against some individuals, all admit the possibility. But this is almost inevitable given the media's news role. When a public figure commits an offence, the public must be informed. And it is the perpetrator of the crime himself who has inflicted the main damage on himself through his acts. In our society the administration of justice is public. Exaggerated publicity can certainly magnify the injury caused to reputation, but that can be helpful as well as harmful.

"Yes, this can sometimes be harmful. A chap was sentenced for pedophilia. He pleaded guilty and he underwent treatment to try to cure him. When he returned to work, his fellow-workers notified a radio station. The whole city knew that this guy had assaulted a young boy. In that case, I have taken his defence. I think that when you have already been punished by the law once, that is enough."

"It's possible. The whole question is to determine whether this damage was deserved or not. Some cases receive too much publicity compared to others. There are, of course, cases where the reputation of innocent persons may be destroyed. But there are also some who willingly enter the media's publicity machinery.

Either justice is private or it is public. It has been decided that private justice would be dangerous. There must be a serious reason to hide the name of an accused.

Moreover, publicity may be helpful as well as harmful. A judge may conclude that the accused has already been punished by the public's severity. And the accused thereby gains the court's understanding."

"It depends. Claire Lortie was acquitted. Then, all of a sudden one is led to say that yes, someone else was treated too severely, because she (Lortie) was acquitted. Brigham was portrayed as insane by the press. But he was sentenced just the same. It is not the press specifically that causes the damage, it is when the whole machinery gets involved. That usually begins with a law..."

If the news broadcast in the media causes injustice, according to some reporters it is due mainly to the reactions of the public which does not properly understand how justice works and which tends to declare an accused person guilty too easily:

"Yes, because the public does not understand the judicial system. One cannot offer law courses on each case. Public opinion condemns before the trial."

"When a person is accused, we are told that that person presumably did such and such a thing. But people quickly arrive at an opinion as to the guilt of the accused. And when the sentence is given, if the person is acquitted, then they say that there is no justice. They continue to believe that the person is guilty."

5.4 The Influence of the Media

Most of the journalists do not think that the news broadcast in the media influences judges in imposing their sentences. A minority (4), however, thinks that occasionally that may happen.

"From time to time. It depends on the relations between the judges and the journalists. It is not the case with all judges. There are some who are completely authoritarian. Again, it depends on personalities. There is a judge who recently complimented one of my colleagues who is retiring and who said from the bench that sometimes he was inspired by this journalist's articles before rendering his decisions."

"Yes. Judges do refer to it. They do not do it under the pressure of public opinion but they do take them into account and they say so because it is a criterion in the imposition of the sentence."

"The media does influence judges. They do not render the same sentence when there are journalists in the court room. Judges are also interested in what journalists say in order to sound out opinion."

"Judges themselves say that when they impose a sentence they take public opinion into account. I was very surprised when I heard this. Besides, it was a young judge who said that, when it is a matter of a crime which generates public disapproval, he will be more severe than in other cases. It is one criterion among others, but it counts."

But as far as the majority are concerned, the influence of the media on judges is limited to form. Judges are sensitive to the presence of journalists in their court room and, like any other person, pay attention to the image that they project. In most cases, they pay a little more attention to the wording and justification of their decision, which will often be written:

"The public character of the trial puts them a little more on their guard. They are more inclined to justify what they do, but it does not change the sentence."

"I have never claimed that journalists influence judges."

With regard to the influence that the media may exercise on the perceptions that the public has of justice, the legal reporters gave us very divergent opinions, ranging from very great influence to a relatively modest influence by referring to all sorts of detailed considerations:

"It is a very considerable influence because, aside from a few rare individuals who attend the trials, it is now the only source of information for the public."

"I suppose, but I am not aware of it. When you write an article, you very often forget that it will be read by thousands of people. I suppose that it has an influence, but I don't know how."

"It is not the only source. There are thousands of people in Canada who have already appeared before judges. The image of justice does not come from the media but from the direct experience that thousands of people have with the law. The media influences only those who have not had direct contact with the law."

"Yes and no. The public should understand that we are not in anyone's pay. We report what happens."

We questioned the journalists more specifically on the influence that the media might have on the degree of permissiveness among the public. Here again, the answers were varied and nuanced. Several first noted that the public is not a

homogeneous whole. Some maintain that the influence of the media promotes greater tolerance, others say that its influence is the opposite:

"The public is made up of all sorts of people. If one talks a lot about one issue, yes, it (the public) may be influenced. In cases of drunken driving, for example."

"It is difficult to make a judgment about a group of people. There are readers who are not interested in this type of news and who never read the legal news. Some who are interested are a bit fascist. There are a lot of them who follow legal current events and who are like that...In order to see why a sentence is given, I imagine that they end up understanding that there are several factors that must be taken into account."

"Yes, it may play a role. Gossip and sensationalist newspapers, which dwell on the past of the accused, can lead to severe treatment."

"The public is more severe than we are. It does not see the accused. The public is always in favour of the victim. We don't see the victim. We see the accused, often looking beaten and forsaken. But we cannot write everything, and have the public hear everything...When people are better informed, I imagine that they will be able to arrive at an opinion which is characterized by greater fairness."

"People don't understand and tend to condemn easily."

"When you make the accused known, this helps people to be more understanding."

The analysis of the perceptions and opinions of journalists that we have just described in this section would require much more time than was allowed us for the whole of this research. While there is some consensus, there is also considerable diversity. They undoubtedly contain relevant considerations and some useful suggestions. Of course, one cannot draw any conclusion on the influence that they might possibly have in practice. To do this, the study should be pursued in greater depth. At this stage, we found no obvious correlation. Should one take this as an indication that journalists are quite successful in keeping their personal opinions separate from their professional practice? Perhaps...certainly at the conversational

level. But to answer this question more precisely, one would need to compare the articles or the reports that they prepare with the opinions that they expressed here.

We did find one thing that was striking however: in their remarks, all the persons interviewed demonstrated prudence, shades of opinion, a liberal stance and a critical mind. In saying this, we do not wish to flatter the journalists, even though this mental attitude does them honour. We simply wish to emphasize how complex it is to interpret their contributions.

CONCLUSION

Our aim was to describe the news strategies and practices of legal reporters in the Quebec media. We believe that sections three and four of this report provide good answers to the questions that one might ask on this subject. The journalists do not refer to an explicit code of procedures, except of course the Criminal Code and the Press Act. The numerous decisions daily necessitated by the exercise of their profession are taken on the basis of their intuition, experience, and impressions at the time and the economic and time constraints that they face. This does not mean that journalists work in a haphazard manner. A retrospective reflection on the ways in which they operate makes it possible to identify a number of rules which in their eyes may seem obvious but which nevertheless are the result of choices made on the basis of what in our society constitute the canons of journalistic writing.

The last section on the opinions concerning the administration of justice, relations with magistrates, and the role and influence of the media, as interesting as it is in that it offers a quick excursion into the impressionistic world of journalists, did not allow us to attain the expected results. We were seeking possible correlations between the perceptions of journalists and their view of the profession. As we saw earlier, it would be hazardous at this stage to draw conclusions on this subject. It is better at this point to remain at the descriptive level which, moreover, was the initial objective of this study.

If this study should be followed up, its aim could be a more in- depth exploration of the preceding question. It could also, if one hoped to expand the description further before plunging into the analysis, be extended to desk chiefs and editorial writers. In our investigation we mainly interviewed journalist-reporters.

But, a certain number of decisions do not depend on them. It is the desk chiefs who choose the headlines and determine what and where something will appear in the day's edition. It is also they who sometimes decide not to publish certain news items. Moreover, it would be interesting to interview editorial writers and those who specialize in analysis and commentary. As we have seen, journalist-reporters only rarely undertake this sort of writing. In most media, the functions of news reporter and commentator are quite distinct and are not performed by the same persons. This new undertaking would enable us to extend to the level of the generation of opinion what the present investigation enabled us to learn about the processing of legal news.

RECOMMENDATIONS

On the basis of such a descriptive study of the strategies and practices of the media in the area of legal news, it is difficult to formulate precise recommendations to a commission concerned with the determination of sentences. The suggestions touching upon news practices themselves seem to us inappropriate because the Commission does not have the mandate to regulate the activities of press enterprises. In this regard, it would futile to propose, for example, that the media devote more resources to the coverage of legal news. Moreover, our study contains little that is of a legal nature. The journalists' opinions concerning the severity or leniency towards certain offences, for example, provide a very fragile foundation for recommendations on these issues. Only from the perspective of the relations between the law and the press can we make some recommendations, or rather some suggestions.

1. **Judges should be encouraged to explain their sentences well. According to the journalists, the majority of magistrates already perform this task adequately. But there are still too many exceptions. A journalist's account is essentially a reported account. The best way for judges to ensure that reporters report and comment on their judgments correctly is for themselves to provide all the relevant details.**
2. **Meetings between judges and the press should be organized regularly. The two professions have their specific and distinct requirements, and one cannot be unduly submitted to the expectations of the other without damaging the public interest. Such meetings, therefore, should not be perceived as opportunities for indirect influence or control. But an annual meeting between judges and legal**

reporters could facilitate better understanding, more mutual respect, and permit exchanges of information which can hardly take place in the court rooms (explanations of judicial procedures, new laws, etc.).

3. Several journalists hope that plea bargaining will become a more regulated and public procedure. The requirements to save time and money, while completely legitimate, should not result in a more secret functioning of justice.
4. The law on contempt of court should be reviewed. While ensuring respect for the court, its application should not give rise to what is often seen by journalists as arbitrariness or intimidation.
5. The question of the presence of cameras in courts of law was raised by some journalists. The author of this report is not in a position to formulate either positive or negative recommendations in this regard. This is a very complex decision to make. The disadvantages are as important as the advantages. But the fact that several American courts do allow the presence of cameras, and the fact that their prohibition represents a serious handicap for televised news should lead the competent authorities to give the matter serious study.

APPENDIX A

List of the Media Contacted - Persons Interviewed

1 Print Media:

- Le Devoir	Mr. Jean-Claude Leclerc
- La Presse	Mrs Joyce Napier
- Le Journal de Montréal	Mr. Rodolphe Morissette
- The Gazette	Mr. René Laurent
	Mr. Macdonald
- Le Soleil	Mrs. Louise Lemieux-Blanchard
- Allo Police	Mr. André Parent
- Photo Police	Mr. Guy Bourdon

2 Television

- Radio-Canada	Mr. Philippe Bélisle
- CBC	Mr. Frank Roach
- CFTM	Mr. Philippe Lapointe
- CFCF	Nil

3 Radio

- Radio-Canada

Mrs Aline Gobeil

- CKAC

Mr. Richard Desmarais

- CJAD

Mr. Bob Quinn

APPENDIX B

Interview Format

Identification

1. Educational background.
2. Years of experience as a journalist.
3. How many years have you been assigned to covering legal news?
4. Sex.
5. Age.
6. Identification of the media to which he/she belongs.

News Practices

1. What importance does your newspaper (or radio station, or television station) give to legal news?
2. What types of cases capture your attention and are talked about in your newspaper?
3. On what criteria do you base your selection?
4. Do you report sentences imposed on the accused?
5. In all cases? In which cases?
6. Why do you report the sentences in these particular cases?
7. How do you report sentences?
8. Factual news or news with commentary?
9. When you report a sentence, do you refer to the crime committed?
10. Do you refer to the circumstances surrounding the case?
11. Do you give an evaluation of the sentence? On whether it is too severe or not severe enough?
12. In which cases?
13. How do you make this evaluation?
14. Do you compare the sentence imposed to the minimum sentence, to the maximum sentence?
15. To evaluate a sentence, do you refer to the record of the person being sentenced?
16. Do you take into account whether this is a first conviction or a repeat offence?
17. If the convicted person was on parole when he/she committed the crime, do you take this into account in your evaluation of the sentence imposed?
18. Do you ever think that you have been too severe with someone when evaluating his/her sentence?
19. If yes, in which cases did this happen?
20. In your articles, are you ever led to analyze what you assume to mean by plea bargaining?

News Policy, Code of Ethics, Professional Rules

1. Is there a written news policy in your media?
2. Does this policy contain clauses which apply more particularly to legal news?
3. Is there a code of ethics in your media?
4. Does this code contain clauses which apply more particularly to legal news?
5. Does your collective agreement (if you have one) contain clauses which apply more particularly to the coverage of legal news?
6. Is there an agreement between the journalists and the courts which governs the manner in which legal news is reported?
7. What rules do you try to follow in exercising your profession as a legal reporter?
8. Are there things that you refuse to write about?
9. What are they? Why?
10. Are there things that you feel that it is your obligation to write about?

Perceptions and Opinions

1. In your opinion, are there crimes for which the law is too severe? Which ones?
2. Are there crimes for which the law is not severe enough? Which ones?
3. In your opinion, are judges too severe, or not severe enough, when imposing sentences for certain crimes? In which cases?
4. Do you believe that there is a great disparity between the sentences imposed for similar crimes? How do you explain this disparity?
5. Do you report this disparity in your articles?
6. In your opinion, do judges give enough information in order to explain their sentences?
7. Do you think that the imposition of sentences must take into account the convicted person's previous record?
8. Do you think that the law should be more severe in cases where the persons who commit crimes are on parole?
9. Do you think that the sentence imposed must take into consideration the convicted person's personal situation (his family situation, for example)?
10. Do you think that judges, when determining sentences, take sufficient account of the injury done to the victim?
11. Do you think that the information broadcast in certain media can be injurious to some people?
12. Do you think that the media perform their news role correctly regarding legal matters?
13. Do you think that legal news must be used to help prevent crime?
14. Do you think that the news broadcast in the media influences judges when imposing sentences? In what way?
15. Do you think that the news broadcast in the media influences the public's perception of justice? In what way?
16. Do you think that some of your colleagues may, on occasion, "charge" an accused?
17. Do you think that the degree of permissiveness among the public is linked to the quality of news? In what way?

